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EXAMINER

WRIGHT, ANDREW D

ART UNIT PAPER NUMBER

3617

DATE MAILED: 11/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/777,393

Applicant(s)

ROBERTS, JOHN

Examiner

Andrew Wright

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 August 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Appeal Brief

1. Applicant's appeal brief filed 8/23/05 necessitated further review of the application. Upon reconsideration it is determined that prosecution must be re-opened. The rejections of the last Office Action are withdrawn. New rejections are outlined below. This action is non-final.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claim 9 recites the limitation "said polyester laminate shell" in line 2. There is insufficient antecedent basis for this limitation in the claim. Claim 9 is written to depend from claim 2. But the polyester laminate shell is first positively recited in claim 3, not in claim 2. Therefore, it is unclear if claim 9 should depend from claim 2 or claim 3.

Therefore, it is impossible to determine the intended scope of claim 9. This renders claim 9 indefinite. For examination, it will be assumed that claim 9 depends from claim

2.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 2, 6, and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Gentile (US 3,182,340). Regarding claim 1, Gentile shows a float. The float could be used as a swim raft. The float comprises a three dimensional shaped body. The body has a substantially flat bottom (figure 2). The body is circular when viewed in plan, and thus has a curved side. The body has a top surface (see figures 1 and 4). The top surface has numerous facets (figure 4). One of the facets is sloped (see the part of the top surface that is at the end of the lead line associated with reference numeral "42" in figure 4). Since the top surface has at least one sloped portion, the top surface can be construed as a sloping top. Claim 1 only broadly recites a sloping top, and does not place further limitations on the degree or extent of the slope. Thus Gentile shows a body with a substantially flat bottom, curved side, and sloping top. Gentile discloses that the body may have an outer shell (90) made of polyester. Gentile discloses that the body has a solid inner core (18) made of foamed polyurethane. Gentile shows a flagpole and flag extending from the top surface (fig 1). The flagpole and flag constitute a decorative indicia. The flagpole and flag extend from the top surface and therefore are associated with the sloping top.

7. Claim 2, the outer shell may comprise polyester (column 6, lines 40-60).

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8. Claim 6, the decorative indicia comprises a flag pole extending from the top. The claim does not recite that the flag pole extends from the sloping portion of the sloping top.

9. Claim 9, the inner core comprises polyurethane foam (column 2, lines 48-52). The outer shell can be polyester. The outer shell is a thin layer of polyester attached to the core, and therefore constitutes a polyester laminate. The outer shell completely encapsulates the inner core.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 1, 5, 6, 10, 13, 16, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simon (US 3,814,439) in view of Gentile (US 3,182,340). Simon shows a floating body that could be used as a swim raft. The body has a flat bottom (fig 2). The body has a curved side (fig 1). The body has a top surface that is flat for the most part with a curved rim around the outer edge. The curved rim has a sloped portion due to the curvature. Thus the top surface has at least a portion that is sloped. Therefore the top surface can be construed as a sloping top. Simon shows a solid core (20) of buoyant material. Simon shows decorative indicia (22, 28, 30) associated with the top. Simon does not disclose an outer shell. In the area of floating devices, it is well

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known and common to encapsulate polystyrene and polyurethane foams in a protective shell to protect the foam from damage. Gentile teaches that a foam core can be encapsulated in protective casing or enclosure to provide longer life to the foam body. Gentile discloses that the shell can be made of any suitable plastic or polymer, including polyester. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Simon by encasing the foam core within a polyester outer shell. The motivation would be to provide protection for the foam core so as to provide a longer life for the device, as taught by Gentile.

12. Claim 5, Simon shows artificial grass applied over the top.

13. Claim 6, Simon shows a flag pole extending from the top.

14. Regarding claim 10, Simon in view of Gentile as already described includes a body having a planar bottom, curved side, sloping top foam core, and polyester shell, artificial grass, and flag pole.

15. Regarding claims 13, 16, and 17, Simon in view of Gentile as already described includes a body having a planar bottom, curved side, sloping top foam core, and polyester shell, artificial grass, and flag pole. Simon in view of Gentile does not explicitly disclose the recited method steps. The method steps, however, are inherent in the making and use of the Simon in view of Gentile apparatus. For example, the skilled artisan wishing to make the Simon in view of Gentile apparatus would necessarily have to form the body, would necessarily have to coat the body, and would necessarily have to apply the indicia. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to devise the recited

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method steps. The motivation would be to make and use the Simon in view of Gentile apparatus.

16. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simon in view of Gentile as applied to claim 1 above, and further in view of Holden (US 3,327,686). Simon in view of Gentile contains the elements of claim 1. Simon shows a floating island as part of a golf game. Simon discloses that the floating island has indicia including artificial grass and a flag pole. Simon does not disclose other indicia including a lighthouse or a palm tree. Holden discloses a small floating island, and teaches that models of tress and buildings can be attached to the island to impart the overall desired natural appearance to the island. Palm trees and light houses are known and common scenery at numerous golf courses. It would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify Simon by adding either a palm tree or a lighthouse to the floating island. The motivation would be to enhance the aesthetic quality of the floating island.

17. Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simon in view of Gentile as applied to claim 10 above, and further in view of Abeille (US 4,825,798). Simon in view of Gentile contains the elements of claim 10. Gentile teaches that an outer shell can be added to a foam core for protection. Gentile further teaches that the outer shell can be a polyester laminate. Gentile further teaches that the outer shell can be colored; but Gentile does not teach how to affect such

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coloring. The use of pigmented polyester gel coats to provide a colored finish is well known in the marine art. Abeille shows a floating dock structure where an inner foam core (26) is encapsulated in an outer shell. The outer shell comprises a polyester laminate (36, 42) with a pigmented polyester gel coat (34) applied thereon. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify Simon by adding a pigmented polyester gel coat to the outer casing. The motivation would be to provide color as suggested by Gentile. Regarding claim 12, Abeille shows that the gel coat may further include textured non-skid surface (32).

18. Claims 1-4 and 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gentile (US 3,182,340) in view of Abeille (US 4,825,798). Gentile discloses the elements of claims 1 and 2. Gentile does not disclose a pigmented polyester gel coat. Gentile teaches that the casing (90) may be colored, but does not disclose how this is achieved. One wishing to make and use the Gentile device would necessarily have to decide on how to color the outside casing and would look to the prior art for guidance. Gentile discloses that the outer casing may be a polyester laminate. Abeille shows a floating dock structure where an inner foam core (26) is encapsulated in an outer shell. The outer shell comprises a polyester laminate (36, 42) with a pigmented polyester gel coat (34) applied thereon. The use of pigmented polyester gel coats to provide a colored finish to marine articles is well known and common. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made

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to modify Gentile by adding a pigmented polyester gel coat to the outer casing (90).

The motivation would be to provide color as suggested by Gentile. Regarding claim 4,

Abeille shows that the gel coat may further include textured non-skid surface (32).

Regarding claims 13-15, Gentile in view of Abeille discloses the body with flat bottom, curved side, sloping top, inner core, outer shell, pigmented polyester gel coat, textured non-skid surface, and decorative indicia. Gentile in view of Abeille does not explicitly disclose the recited method steps. The method steps, however, are inherent in the making and use of the Gentile in view of Abeille apparatus. For example, the skilled artisan wishing to make the Gentile in view of Abeille apparatus would necessarily have to form the body, would necessarily have to coat the body, and would necessarily have to apply the indicia. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to devise the recited method steps. The motivation would be to make and use the Gentile in view of Abeille apparatus.

19. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gentile (US 3,182,340). Gentile as described above with respect to claims 1, 2, 6, and 9 discloses the structure associated with claim 13. Gentile does not explicitly disclose the recited method steps. The method steps, however, are inherent in the making and use of the Gentile apparatus. For example, the skilled artisan wishing to make the Gentile apparatus would necessarily have to form the body, would necessarily have to coat the body, and would necessarily have to apply the indicia. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to

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devise the recited method steps. The motivation would be to make and use the Gentile apparatus.

Response to Arguments

20. Applicant's arguments with respect to claims 1-17 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

21. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Holden ('649) shows a floating island that comprises a plastic shell, foam core, flat bottom, curved side, and sloped top (fig 4). Geiger ('874) shows a floating island that comprises a polymer shell, foam core, flat bottom, curved side, and sloped top (figs 1-3). Simola ('248) discloses a floating platform that comprises a polystyrene or polyurethane foam core and a polyethylene outer shell. The shell completely encapsulates the core to protect the core from marine growth. Suellentrop ('857) discloses a swim raft comprising a solid foam core, pvc coating, and further teaches that the device can be made in any shape desired. Bulk ('954) shows a floating island comprising a foam core, flat bottom, curved side, sloped top, and numerous indicia attached to the top. Day et al. ('418) shows a floating island made of with a foam core, flat bottom, curved side, and sloped top.

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22. Any inquiry concerning this communication should be directed to examiner Andrew D. Wright at telephone number 571-272-6690. The examiner can normally be reached Monday-Friday from 9:00 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, S. Joe Morano, can be reached at 571-272-6684. **The Central FAX Number for official communications is 571-273-8300.** The fax number directly to the examiner for unofficial communications is 571-273-6690.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Andrew D. Wright
Patent Examiner
Art Unit 3617

ANDREW D. WRIGHT
PRIMARY EXAMINER

Ar 11/4/05